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August 31, 2020

**VIA ELECTRONIC FILING**

Jocelyn G. Boyd, Esquire  
Chief Clerk & Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, South Carolina 29210

RE: Responsive Comments on Procedure to Address Conceptual Issues Around  
Non-Allowable Expenses  
**Docket No. 2019-232-A**

Dear Ms. Boyd:

This letter is filed with the Public Service Commission of South Carolina (“Commission”) by the South Carolina Office of Regulatory Staff (“ORS”) in response to Commission Order No. 2020-491, which requested comments by the public and any interested parties by August 31, 2020.

The docket was opened to comply with Commission Order No. 2019-341 in Docket No. 2018-318-E, in which the Commission directed the establishment of an administrative docket regarding a determination of what public utility incurred expenses should be non-allowable “to ensure clarity for future proceedings.” ORS appreciates the opportunity to provide additional responsive comments.

Duke Energy Progress (“DEP”) and Duke Energy Carolinas (“DEC”) spent considerable time with ORS to reach a limited agreement on certain expense categories and specific expenses to be classified as non-allowable for recovery through customer rates. The areas which ORS, DEP and DEC were able to reach an agreement are provided in Exhibit A to this letter. While ORS was able to reach a limited agreement with DEP and DEC on certain items, it is ORS’s position that a full resolution of the conceptual issues raised by the other participants in this docket may require the Commission to promulgate regulations to address the recovery of costs or expenses for ratemaking purposes. ORS continues to support its original comments filed on September 6, 2019, which informed the Commission that transparent and well-defined rules regarding the recovery of costs or expenses would provide great benefit to both regulated utilities and the utility customers. ORS believes that Commission regulations are the best means to achieve this end. A copy of that filing and its Attachment are attached to this letter as Exhibit B.

ORS urges the Commission to accept the recommendations of ORS which are detailed in Exhibit B. Adopting these standards would inform ORS, utility customers, and regulated utilities

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of the Commission's expectations regarding the recovery of expenses in utility rate cases. Attachment A of Exhibit B provides a detailed description of types of utility operating expenses that should be classified as non-allowable expenses and excluded from recovery through customer rates according to Commission Orders and the National Association of Regulatory Utility Commissioners ("NARUC") audit manual. Any policy, guideline and/or regulations adopted by the Commission addressing allowable expenses for ratemaking purposes should promote judicial economy, streamline the inspection, audit and examination process, ensure utility compliance with prior Commission orders, enhance transparency of utility rates and services and mitigate the risk to utility customers.

The Commission has the authority "to fix just and reasonable standards, classifications, regulations, practices, and measurement of service to be furnished, imposed or observed, and followed by every public utility in this State." S.C. Code Ann. §58-3-140 (2015). The Commission therefore may adopt policies and guidelines defining what categories of costs or expenses the utilities under the Commission's jurisdiction are generally permitted or not permitted to recover from its customers.

Contrary to the statement filed by Dominion on July 17, 2020, it is not ORS's position that regulated utilities should be deprived of due process. Currently the Commission determines the recoverability of costs or expenses on a case-by-case basis and there is **no** standard or guideline for allowable versus non-allowable costs and expenses. Utilities have argued during rate proceedings that ORS's recommendations to disallow certain costs or expenses are "unexpected" or "surprising." However, ORS employs the Commission's past practices related to allowable expenses to make its recommendations. And, in recent rate proceedings a large amount of time has been spent by the parties and the Commission discussing costs or expenses such as lobbying, employee gifts and refreshments, and executive bonuses that provide **no** benefit to customers. By establishing certain categories and standards, the Commission will provide guidance to all parties that may lessen the disputed issues during rate case hearings, without precluding the parties of the right to represent and support costs or expenses that are incurred to provide customers with safe and reliable utility service.

Dominion is incorrect in its claim that ORS's previous challenge to certain training session expenses is "inconsistent with the general rule presuming reasonableness unless some evidence raising doubt about their appropriateness is adduced." In fact, ORS's challenge, by way of asking for verification of attendance of employees, does, by its very nature, challenge the reasonableness of the expenses. Should the Commission establish a policy, guideline and/or promulgate regulations to establish standards as to whether or not such verification is required to allow training costs, the Commission may eliminate disputes between the utility and other parties and allow the Commission and other parties to focus attention on a thorough review of other more impactful costs or expenses. Despite discussing certain costs in great detail, Dominion's additional comments filed on July 17, 2020, does not offer any resolution, but appears to inform the Commission that the utility should make its own expense policy and ORS and other parties can attempt to challenge that policy. In a general rate proceeding, ORS is tasked with the review and investigation of the utility's Application and underlying documentation to support the proposed rate request. ORS audits and examines actual expenses incurred by the utility and makes

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recommendations to the Commission. A review of the utility expense policy is not sufficient to determine if the request for increased rates is just and reasonable.

It is not disputed that this Commission has historically excluded certain utility operating expenses from customer rates. In general, the Commission has found that if a utility requests recovery of costs that 1) lack a direct correlation with the provision of utility service; or 2) fail to provide a direct and substantial benefit to the customers, the expense is deemed “non-allowable” and disallowed for ratemaking purposes. Additionally, the South Carolina House of Representatives is considering an amendment to Title 58 that would prevent utilities from recovering certain non-allowed expenses from customers. See, House Bill 5232 at [https://legiscan.com/SC/text/H5232/id/2133674/South Carolina-2019-H5232-introduced.html](https://legiscan.com/SC/text/H5232/id/2133674/South%20Carolina-2019-H5232-introduced.html).

While ORS, DEC, and DEP could not reach a comprehensive agreement with regards to the framework identified by ORS in its Attachment A of Exhibit B, ORS provides Exhibit A to illustrate those areas where there is agreement between ORS, DEC and DEP are in agreement.

ORS appreciates the Commission’s interest in the issues surrounding non-allowable utility operating expenses and the cooperation of DEC and DEP in attempting to reach a consensus. ORS supports the items agreed to in Exhibit A, but requests that the Commission take additional steps to adopt the framework detailed in Exhibit B through Commission Order and/or regulation. ORS supports the initiation of a rulemaking process in accordance with the Administrative Procedures Act (“APA”) to promulgate regulations that provide guidelines regarding the recoverability by utilities of the expenses detailed in the Exhibits. The recommendations by ORS to initiate the rulemaking process and promulgate regulations that instruct utilities under the Commission’s jurisdiction to categorize and record non-allowable operating expenses below-the-line would provide clarity and streamline the investigation, audit, and examination process for both the utilities and ORS.

As the Commission is aware, South Carolina has one of the shortest general rate proceeding schedules in the nation. ORS’s recommendations will therefore benefit both the utility and the customers in future rate proceedings by streamlining discussions on certain non-allowable expenses and enabling more meaningful discussion on challenging issues facing the Commission. Should the Commission require additional information or comment, ORS is willing to provide such either in writing or at oral argument before the Commission.

Sincerely,

*s/ Jeffrey M. Nelson*

Jeffrey M. Nelson

cc: All Parties of Record (via e-mail)  
David Butler, Esquire (via e-mail)

Encl.